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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/792,041

03/03/2004

Sanford L. Britt

03-535-Z

4813

31718

7590

06/30/2006

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EXAMINER

RAEVIS, ROBERT R

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/792,041

Applicant(s)

BRITT, SANFORD L.

Examiner

Robert R. Raevis

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-23,25-33,35-52 and 54-86 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-6,8-23,25-33,35-52 and 54-82 is/are allowed.
- 6) ☒ Claim(s) 83-86 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Exhibit "A".

### DETAILED ACTION

Claims 83-86 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claims 83,85, what does "permitting introduction of a syringe needle through said end seals" *structurally* add to this *apparatus* claim? After all, the claims do not include a needles, leaving only the claimed membrane operative connected to the sample container.

Claim 83,86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips in view of Banu.

Phillips teaches a container, including: body 12; seal 16,18 "formed of rubber" (col. 2, line 17), the annular portion of the seal immediately below flange 22 and around the protrusion (line the seal) from which wire 26 extends providing for a thin-membrane portion that is about the center portion of the seal (See Exhibit "A"); elastic member 14; and extending from each of the seals, the seals being held open by wires 24,26.

Phillips does not state that protrusions removable engage means for holding open the seals. Phillips is not clear where the member 14 ends and the wires 24,26 begin.

As to claims 83,85, it would have been obvious to employ Banu's extended ends 14,15 with circular rings (visible in Figure 8) to secure Phillips seals to wires Banu

teaches that a ring may be inserted into a plug to secure a trigger line. It would have been obvious to employ removable rings (like a key ring) because a ring must be removable in nature to permit for initial insertion of that ring on an item of interest. The thin rubber wall of Phillips is capable of permitting for introduction of a needle as much as Applicant's. Please note that the claim does not include a needle, and thus the phrase "permitting introduction of syringe needle through said end seals" is either (1) a statement of intended use in this apparatus claim, or (2) possibly a suggestion of membrane thickness. Finally, Banu teaches connecting seals together with an elastic element 20 connected on the bottoms of the seals, to assure that the seals are effectively drawn together.

As to claim 85, note the platform 52 and trigger (Fig. 3) of Phillips.

Claims 84,85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips in view of Banu as applied to claim 83 above, and further in view of Robbins.

As to claim 84, it would have been obvious to employ Robbins "osmotic membrane" (col. 2, line 28; col. 1, lines 21-22) cap for Phillips to allow for maintaining a representative sample. In addition, it would have been obvious to either (1) employ a second seal (cap 23) on the other end to assure that the sample container is sealed, or (2) to provide for a container kit that has more than one "osmotic membrane" caps to permit for additional sample taking with the same container.

Claim 84,86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips in view of Banu, and further in view of Laird et al.

As to claims 84,86, it would have been obvious to employ a few of Laird's containers 22 (with septum 27) to store a samples taken from Phillip's container for subsequent handling/analysis, as Laird teaches use of sample tubes with septum caps for presenting a sample to an analyzer 158.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 5:30am to 3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams, can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


  
RAEVIS

EXHIBIT "A"

